

BEFORE THE OFFICE OF CAMPAIGN FINANCE
DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND ETHICS
FRANK D. REEVES MUNICIPAL BUILDING
2000 14TH STREET, N.W. SUITE 420
WASHINGTON, D.C. 20009
(202) 671-0550

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| IN THE MATTER OF |) | |
| |) | DATE: December 30, 2005 |
| Wilhelmina Lawson |) | |
| Advisory Neighborhood Commissioner for |) | DOCKET NO.: OCF FI 9805A |
| Advisory Neighborhood Commission 5B06 |) | |
| 1510 Montello Avenue, N.E. |) | |
| Washington, D.C. 20002 |) | |

ORDER

Statement of the Case

This matter came before the Office of Campaign Finance (OCF) pursuant to a complaint filed by Advisory Neighborhood Commissioner (Commissioner), for Advisory Neighborhood Commission (ANC) 5B03, Regina James. Commissioner James alleged that on or about October 7, 2005, Commissioner Wilhelmina Lawson violated the D.C. Campaign Finance Reform and Conflict of Interest Act of 1974 (the Act), D.C. Official Code §§1-1101.01 et seq. (2001 Edition). Specifically, Commissioner James accused Commissioner Lawson of accepting funds in excess of \$1094 from Mr. Daniel Clayton in his business establishment, Club Rio of 2335 Bladensburg Road, N.E., Washington, D.C., 20008 (Club Rio), which is located in Ward Five, where both Commissioners reside. Commissioner James believes that Commissioner Lawson received the monies from Mr. Clayton because she supported same in his attempt to seek ANC approval “to [lift] the restrictions from his [Alcohol Beverage Regulation Administration Board] license [at Club Rio] on October 7, 2004,” the date of the meeting.

Issues

1. Whether respondent violated D.C. Official Code §1-1106.01(a) when she allegedly realized personal gain through official conduct by accepting, in her capacity as Commissioner of ANC 5B06, over \$1096 from Daniel Clayton who, at the October 2004 ANC meeting, petitioned said ANC for its support “to [lift] the restrictions from his [Alcohol Beverage Regulation Administration Board] license” at Club Rio.
2. Whether respondent violated D.C. Official Code §1-1106.01(b) when she allegedly used her official position of “Commissioner of ANC 5B06” to obtain financial gain for herself or any business with which she was associated when she accepted over \$1096 from Daniel Clayton who, at the October 2004 ANC meeting, petitioned said ANC for its support “to [lift] the restrictions from his [Alcohol Beverage Regulation Administration Board] license” at Club Rio.

3. Whether respondent violated D.C. Official Code §1-1106.01(c) when she, in her capacity as Commissioner of ANC 5B06, allegedly solicited and received over \$1096 in exchange for her endorsement of Daniel Clayton who, at the October 2004 ANC meeting, petitioned said ANC for its support “to [lift] the restrictions from his [Alcohol Beverage Regulation Administration Board] license” at Club Rio.
4. Whether respondent violated D.C. Official Code §1-1106.01(d) when she, in her capacity as Commissioner of ANC 5B06, allegedly solicited and received over \$1096 as assistance given in the court of her employment from Daniel Clayton who, at the October 2004 ANC meeting, petitioned said ANC for its support “to [lift] the restrictions from his [Alcohol Beverage Regulation Administration Board] license” at Club Rio.

Background

OCF reviewed and accepted the complaint from Commissioner James on September 8, 2005. See Complaint. A tape recording of the events of November 21, 2004 was submitted therewith. Initial inquiries were conducted prior thereto in which Commissioner Lawson and Daniel Clayton were each advised of the complaint and provided an opportunity to respond to the allegations. Whereupon, OCF summoned and queried each ANC 5B Commissioner as to his or her knowledge of the circumstances alleged herein. The scope of the OCF investigation encompassed reviewing and researching documents, verifying and evaluating testimony, and scheduling and conducting in-person interviews. The investigation ended on December 8, 2005.

Relevant Statutory and Regulatory Provisions

D.C. Official Code §1-1106.01 states, in pertinent part:

- (a) The Congress declares that elective and public office is a public trust, and any effort to realize personal gain through official conduct is a violation of that trust.
- (b) No public official shall use his or her official position to obtain financial gain for himself or herself. . .or any business with which he or she. . .is associated, other than that compensation provided by law for said public official. . .If an action is taken by any [District government instrumentality], except by the Council of the District of Columbia, in violation of this section, such action may be set aside and declared void and of no effect, upon a proper order of a court of competent jurisdiction.
- (c) No person shall offer or give to a public official. . .and no public official shall solicit or receive anything of value. . .based on any understanding that such public official’s official actions or judgment or vote would be influenced thereby, or where it could reasonably be inferred that the thing of value would influence the public official in the discharge of his or her duties, or as a reward, except for political contributions publicly reported pursuant to [the Act] and transactions made in the ordinary course of business of the person offering or giving the thing of value.

- (d) No person shall offer or pay to a public official, and no public official shall solicit or receive any money, in addition to that lawfully received by the public official in his or her official capacity, for advice or assistance given in the course of the public official's employment or relating to his or her employment.

D.C. Official Code §1-1106.01(h)(2) defines "business" to mean "any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock, trust, and any legal entity through which business is conducted for profit".

Summary of Evidence

On August 22, 2005, Commissioner Lawson submitted a written notarized response in which she emphatically denied all allegations of wrongdoing. Commissioner Lawson specifically stated that, in addition to her position as an ANC Commissioner, she also serves as president of the Trinidad Concerned Citizens for Reform, Inc. (TCCR), "a 501C3 charity organization, providing services and programs to the residents of the Trinidad neighborhood since August 1996." See Attachment A. Commissioner Lawson asserted that each winter, TCCR distributes Thanksgiving Baskets to seniors and needy residents in the community. Additionally, TCCR sponsors a "Breakfast with Santa" event where the neighborhood children and youth receive home cooked breakfast, toys, and goody bags filled with fresh fruit, raisins and Christmas candies.

Commissioner Lawson acknowledged that she received a cash donation in excess of \$1096 from Daniel Clayton and the Club Rio Dancers on November 21, 2005. She stated that she accepted the funds on behalf of TCCR and used the monies to increase the number of recipients on the TCCR annual distribution programs. As evidence of her veracity, Commissioner Lawson attached copies of the flyers advertising the event and receipts of the expenditures. See Attachments B and C.

On August 26, 2005, Daniel Clayton submitted a written notarized response in which he averred that "[f]or many years, [they] have collected funds from the Club Rio Dancers and the general public to assist the needy in the Ward 5 community. See Attachment D. He further averred that Commissioner Lawson, among others, never requested monies from him for their activities and that she is one "who devote[s her] time to doing only good things in the community but never get[s] the credit for the things that [she does]."

The undersigned reviewed the submitted tape: November 21, 2004 at Club Rio (Rio Tape). Dancing is depicted and Daniel Clayton salutes a matriarch's birthday. Of interest to the undersigned were the following passages:

This is the "last night for our Thanksgiving Drive. . .got a couple of ANC Commissioners in the house. . .come on down front[.] The people that I'm gonna invite down. . .its stories behind these people and you really should know exactly what it is[.] These ladies I've had the opportunity to have been knowing for awhile and also I've had the opportunity see how much they do as far as community work is concerned[.] These are some hard working ladies[.]"

Mr. Clayton next related that he attended the ANC meeting and believed that many of the Commissioners had their own personal agenda. He continued with a discussion as to what he also believed was a personal vendetta against him and his business and that the ANC and community leaders were against him.

Of further interest to the undersigned were these passages:

I looked at the record and in that time. . .these same leaders. . .I haven't seen them feed nobody. . .I haven't seen them go to see no senior citizens nowhere. . .visit anyone[.] These people [Commissioner Lawson and Mrs. Austin] I do know do that. . .and I think that they really need to be commended. This lady here [Commissioner Lawson] I know on a regular basis has gone into her pocket at Thanksgiving to buy Thanksgiving stuff for people to feed in her ward[.] Now, I invited all of these members of this ANC to come here to collect these funds. . .as we usually do[.] Ms. Lawson and Ms. Austin were the two that came and we are going to give our funds to them for them to contribute to the ANCs whichever way that they choose to do it as far as Thanksgiving and the kids are concerned. This is a worthwhile cause that we've been doing on a regular basis."

Commissioner Lawson and Commissioner Austin responded; but, the undersigned was unable to discern their remarks.

On October 18, 2005, Commissioner Kathy Henderson of ANC 5B10 appeared at the OCF offices for a recorded interview (Henderson Interview), which was conducted by William O. SanFord, Senior Staff Attorney. Commissioner Henderson stated that she was vaguely familiar with the controversy involving her two colleagues; and, had no specific knowledge of whether Commissioner Lawson had accepted funds from Mr. Clayton, or the purpose for which the funds were intended or expended. Commissioner Henderson additionally stated that she did not witness any exchange of funds between Mr. Clayton and Commissioner Lawson.

Also, on October 18, 2005, ANC Commissioner Rayseen Woodland of ANC 5B04 appeared at the OCF offices for a recorded interview (Woodland Interview), which was conducted by Mr. SanFord. Commissioner Woodland stated that she had no specific knowledge of the alleged exchange of funds between Mr. Clayton and Commissioner Lawson because she was not in attendance at the event where the exchange allegedly occurred. However, Commissioner Woodland stated that she was very familiar with Commissioner Lawson's community work through the TCCR and that Commissioner Lawson has a history of assisting needy members of the community. Thus, she continued that she would not be surprised to discover that as president of the TCCR, Commissioner Lawson accepted a charitable donation with which she utilized to assist less fortunate members of the community.

Additionally, on October 18, 2005, Chairperson William C. Shelton (5B01) of ANC 5B appeared at the OCF offices for a recorded interview (Shelton Interview), which was conducted by Mr. SanFord. Chairman Shelton stated that Mr. Clayton appeared before the Commission in October and November

of 2004 to seek support from the Commission in his effort to remove restrictions on his alcohol beverage license upon which had been imposed by the District of Columbia Alcoholic Beverage Regulation Administration. According to Chairman Shelton, the ANC was prepared to vote to endorse Mr. Clayton's proposal; but, the vote was prevented from occurring when Commissioner James abruptly left the meeting and eliminated the quorum required for official action to be taken by the Commission. Chairman Shelton additionally stated that he has served with Commissioner Lawson for three years and he does not believe that she would engage in unethical behavior under any circumstances. Chairman Shelton also stated that he personally observed the exchange of funds between Mr. Clayton and Commissioner Lawson and he attested to the fact that the funds were not intended for the Commission. According to Chairman Shelton, both Mr. Clayton and Commissioner Lawson made it clear that the funds were intended for needy members of the community and would be distributed through the TCCR.

Finally, on October 18, 2005, Former Commissioner Terrance J. McMichael for ANC 5B11 appeared at the OCF offices for a recorded interview (McMichael Interview), which was conducted by Mr. SanFord. Commissioner McMichael stated that he had no specific knowledge of whether Commissioner Lawson had accepted funds from Mr. Clayton; or, the purpose for which the funds were intended or expended because he did not witness any exchange of funds between Mr. Clayton and Commissioner Lawson. However, Commissioner McMichael did state that he knows Commissioner Lawson very well, holds her in the highest esteem and knows that she is a community activist who would never use her official position for personal gain.

On October 28, 2005, Commissioner Rebecca Scates for ANC 5B02 appeared at the OCF offices for a recorded interview (Scates Interview), which was conducted by Mr. SanFord. Commissioner Scates stated that she had no specific knowledge of whether Commissioner Lawson had accepted funds from Mr. Clayton; or, the purpose for which the funds were intended or expended because she was not present during the alleged exchange of funds between Mr. Clayton and Commissioner Lawson.

On November 2, 2005, ANC Commissioner Joan E. Wallace for ANC 5B09 appeared at the OCF offices for a recorded interview (Wallace Interview), which was conducted by Mr. SanFord. Commissioner Wallace stated that that she had general knowledge of the exchange of funds between Mr. Clayton and Commissioner Lawson; and, it was her understanding that the funds were intended for the needy members of the community and not for the Commission. Commissioner Wallace additionally stated that Mr. Clayton has a history of charitable giving in the community; and, that Commissioner Lawson is a dedicated member of the Commission and the community, who is active in several organizations that perform charitable services, and would never use her official position for personal gain.

On November 16, 2005, Mr. Daniel Clayton appeared at the OCF offices for a recorded interview (Clayton Interview), which was conducted by Mr. SanFord. Mr. Clayton, who had previously submitted a written response, stated that he provided funds for needy residents of the community during the 2004 holiday season. He additionally stated that the funds were not intended for the Commission; but, rather for distribution through community organizations to less fortunate members therein. Mr. Clayton further stated that the charitable donation he provided had absolutely nothing to do with his proposal to

request ANC support to remove the restrictions on his alcoholic beverage license. He continued that he has performed charitable services in the community for over twenty years and has been recognized by members of the City Council, the Metropolitan Police Department and the ANC. See Attachment E. Mr. Clayton concluded that he is completely satisfied with the distribution of the funds by Commissioner Lawson through the TCCR; and, he believes she should be commended for the commitment and dedication she has demonstrated to her community over the years.

According to Mr. SanFord, all of the witnesses were cooperative; and, in his opinion, completely credible.

Findings of Fact

Having reviewed the allegations and the total record herein, I find:

1. In 2004, Respondent was Commissioner for ANC 5B06; and, is currently serving her third term as such. See Attachment A.
2. In 2004, Respondent was also President of the Trinidad Concerned Citizens for Reform Incorporated (TCCR), a federally recognized charitable organization, providing services and programs to the Trinidad neighborhood of Ward 5 since August 1996. Id.
3. By correspondence dated May 12, 2004, respondent wrote to the Alcohol Beverage Regulation Administration Board “to completely lift the restrictions” on the license of Daniel Clayton for his establishment, Club Rio, in her capacities as Executive Director of TCCR and Commissioner for ANC 5B06. See attachment to Complaint.
4. In October 2004, Daniel Clayton sought endorsement from ANC 5B to “lift the restriction” imposed by the Alcohol Beverage Regulation Administration Board on his license at Club Rio. Id.
5. At the October 2004 meeting, Daniel Clayton advised ANC 5B of “the strategic direction for his club, which should eliminate many concerns for the surrounding communities”; and, ANC 5B was prepared to offer the endorsement, but, at the time of the vote, it lacked a quorum. Id.
6. In testimony before the Alcohol Beverage Regulation Administration Board on November 10, 2004, respondent was identified as Commissioner for ANC 5B06 and stated that she was “also president of a civic association named Trinidad Concerned Citizens for Reform”; and, affirmed that she “would agree to have the restrictions lifted [from Mr. Clayton’s establishment], provided that the community [was] made safe with the reimbursable detail [Guardian Angels] and other initiatives as outlined [in Mr. Clayton’s security and management plan submitted to the Alcohol Beverage Regulation Administration Board].” Id.
7. During Thanksgiving of each year since 1996, TCCR, under the leadership of respondent, distributes food baskets to seniors and other needy residents. See Attachments A and D; Rio Tape, Woodland Interview, Shelton Interview, Wallace Interview, and Clayton Interview.

8. For many years, Daniel Clayton and the Club Rio Dancers have regularly collected and donated funds during Thanksgiving to benefit the needy in the Ward 5 community and supported TCCR from its inception. See Attachment E.
9. On November 21, 2004, Daniel Clayton and the Club Rio Dancers selected, inter alia, Commissioner Lawson, in her role as President of TCCR, to divide and distribute their donation of over \$1096 for the needy of Ward 5 through TCCR, because they were well aware of her community service long before she was an ANC Commissioner. Rio Tape and Clayton Interview.
10. Commissioner Lawson spent the donation from Daniel Clayton and the Club Rio Dancers for Thanksgiving foodstuffs and a celebration for senior and needy members of the Ward 5 community. See Attachments B and C.

Conclusions of Law

Based upon the record and the evidence herein, I therefore conclude:

1. Respondent did not realize personal gain through official conduct, as stated in D.C. Official Code §1-1106.01(a), by accepting over \$1096 from Daniel Clayton who, at the October 2004 ANC meeting, petitioned said ANC for its support “to [lift] the restrictions from his [Alcohol Beverage Regulation Administration Board] license” at Club Rio because the donation was offered by Mr. Clayton and the Club Rio Dancers, as part of their annual holiday program; accepted by respondent in her capacity as President of TCCR, a non-profit entity; and spent for the purchases of Thanksgiving foodstuffs and a celebration for senior and needy members of the Ward 5 community.*/
2. TCCR is not a “business,” pursuant to D.C. Official Code §1-1106.01(h) (2), because it is a non-profit entity and is not “conducted for profit.”
3. All other issues are moot inasmuch as respondent was not acting in her capacity as Commissioner of ANC 5B06, i.e., as a public official, as required by D.C. Official Code §§1-1106.01(b)-(d), when she accepted over \$1096 from Daniel Clayton and the Club Rio Dancers to assist with TCCR’s Thanksgiving Basket donations for senior and needy members of the Ward 5 community.

Recommendation

I hereby recommend the Director to dismiss this complaint.

Date

Kathy S. Williams
General Counsel

*/ Had there been an inapposite conclusion, Daniel Clayton would have been considered a respondent as the offeror of the offending “thing of value,” i.e., the funds in excess of \$1096. See §§1-1106.01©-(d).

ORDER OF THE DIRECTOR

IT IS ORDERED that this matter be dismissed. Attachments are available for review or copying in OCF, upon request.

This Order may be appealed to the Board of Elections and Ethics within 15 days from issuance.

Date

Cecily E. Collier-Montgomery
Director

SERVICE OF ORDER

This is to certify that I have served a true copy of the foregoing Order to complainant, respondent and other interested parties.

NOTICE

Pursuant to 3 D.C.M.R. §3711.5 (1999, as amended), any fine imposed by the Director shall become effective on the 16th day following the issuance of a decision and order, if the respondent does not request an appeal of this matter. If applicable, within 10 days of the effective date of this order, please make a check or money order payable to the D.C. Treasurer, c/o Office of Campaign Finance, Suite 420, 2000 14th Street, N.W., Washington, D.C., 20009.